

ENTERED

January 07, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ALVIN HICKS,

Plaintiff,

VS.

ANDREW NINO, *et al*,

Defendants.

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CIVIL ACTION NO. 2:19-CV-331

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION
TO DISMISS CERTAIN CLAIMS AND TO RETAIN CASE**


On December 9, 2019, on an initial screening of Plaintiff's Civil Rights Act complaint, United States Magistrate Judge Jason B. Libby issued his "Memorandum and Recommendation to Dismiss Certain Claims and to Retain Case" (D.E. 8). Plaintiff was provided proper notice of, and opportunity to object to, the Magistrate Judge's Memorandum and Recommendation. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); General Order No. 2002-13. No objections have been timely filed.

When no timely objection to a magistrate judge's memorandum and recommendation is filed, the district court need only satisfy itself that there is no clear error on the face of the record and accept the magistrate judge's memorandum and recommendation. *Guillory v. PPG Industries, Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)).

Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge's Memorandum and Recommendation (D.E. 8), and all other relevant documents in the record, and finding no clear error, the Court **ADOPTS** as its own the

findings and conclusions of the Magistrate Judge. Accordingly, the excessive force claim against Sergeant Andrew Nino in his individual capacity is **RETAINED**. The Court further exercises supplemental jurisdiction over Plaintiff's state law claim for intentional infliction of emotional distress against Sergeant Nino in his individual capacity, which claim is **RETAINED**. All claims against Defendants TDCJ, Lt. Zambrano, Officer Olazaba, and unknown officers are **DISMISSED WITHOUT PREJUDICE**. Plaintiff's state law negligence claim against Sergeant Nino is **DISMISSED WITHOUT PREJUDICE** and Plaintiff's claim for money damages against Sergeant Nino in his official capacity is **DISMISSED** as barred by the Eleventh Amendment.

ORDERED this 6th day of January, 2020.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE